

RESOLUTION NO. 75381

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING ACTIONS FOR THE DISPOSITION OF BALANCES REMAINING IN EXPIRED SPECIAL ASSESSMENT DISTRICT FUNDS BY: (1) DECLARING SURPLUS CONSTRUCTION FUNDS FOR IMPROVEMENT DISTRICT NOS. 83-180SJ (TENTH-SENER) AND 87-201SJ (N. 1ST STREET – E. TASMAN REFUNDING) AND AUTHORIZING THE USE OF THESE FUNDS FOR THE MAINTENANCE OF IMPROVEMENTS FUNDED BY THESE DISTRICTS; (2) AUTHORIZING THE LIQUIDATION OF SURPLUS CONSTRUCTION AND ADMINISTRATIVE FUNDS AND TRANSFER TO THE GENERAL FUND; (3) AUTHORIZING THE DISBURSEMENT OF EXCESS ASSESSMENT AND BOND RESERVE FUNDS; AND (4) AUTHORIZING THE DISPOSITION OF EXCESS WATER MAIN REPAYMENT FUNDS

WHEREAS, the City of San José (“City”) historically has formed special assessment districts to finance the construction of public improvements and public utility infrastructure in new developments through the issuance of special assessment bonds; and

WHEREAS, currently there are 50 expired special assessment districts or reassessment districts (collectively, the “Districts”) with remaining fund balances as specified in Appendix A of this Resolution, for which special assessment bonds (the “Bonds”) were issued to fund public improvements or public utility infrastructure, or both; and

WHEREAS, the formation of the Districts was pursuant to (1) the Municipal Improvement Act of 1913 [Streets and Highways Code, Division 12] (the “1913 Act”) or (2) San José Municipal Code Chapter 14.21 (“Chapter 14.21”), which incorporates and modifies the 1913 Act or (3) both Chapter 14.21 and the 1913 Act; and

WHEREAS, the Bonds were issued pursuant to (1) the Improvement Bonds Act of 1915 [Streets and Highways Code, Division 10] (the “1915 Act”) or (2) the Refunding Act of 1984 for 1915 Improvement Act Bonds [Streets and Highways Code, Division 11.5] (the “Refunding

Act”) or (3) the Marks-Roos Local Bond Pooling Act of 1985 [Government Code Section 6584 et. seq], and were secured by special assessment liens on the real property parcels located within the boundaries of the Districts; and

WHEREAS, the Bonds have been repaid and the special assessment liens removed from the real property parcels within the Districts; and

WHEREAS, on this date, the City’s Administration presented to this Council a memorandum from the Finance Director and the Budget Director dated May 3, 2010, which sets forth recommendations for the disposition of the remaining balances in the construction funds, redemption funds, reserve funds and water main repayment funds for the 50 expired Districts (the “Administration’s Memorandum”); and

WHEREAS, for 30 of the 32 Districts with remaining construction funds, in accordance with Streets and Highways Code Section 10427 and the City policy then in effect, the City Council has adopted one or more resolutions declaring the construction funds as surplus and directing the disposition of the funds, as specified in Appendix B of this Resolution; and

WHEREAS, for both Improvement District No. 83-180SJ (Tenth-Senter) and Improvement District No. 87-201SJ (N. 1st Street – E. Tasman Refunding), construction fund balances remain and there is no record that the City Council previously declared such funds as surplus; and

WHEREAS, more than two years prior to the date of this Resolution, the improvement bonds representing unpaid assessments in Improvement District No. 83-180SJ (Tenth-Senter) and in the predecessor district of Improvement District No. 87-201SJ (N. 1st Street – E. Tasman Refunding) were delivered and the proceeds deposited in the construction funds that were established for these two districts; and

WHEREAS, the improvements funded by Improvement District No. 83-180SJ and

Improvement District No. 87-201SJ have been completed and all known claims have been paid from the construction funds and, as of June 30, 2009, the date of accounting, a balance of \$214,540 remains in the construction fund for Improvement District No. 83-180SJ and a balance of \$72,974 remains in the construction fund for Improvement District No. 87-201SJ, and the City desires to declare these funds surplus and transfer the surplus funds to the General Fund to fund maintenance costs of the improvements funded by these districts as specified in the Administration's Memorandum; and

WHEREAS, of the remaining 30 Districts with construction fund balances, the City previously provided credits on the assessment roll and attempted to provide cash refunds to property owners, and more than 4 years have passed since the Bonds for each of these 30 Districts have been repaid; and

WHEREAS, the Administration's Memorandum recommends that pursuant to Streets and Highways Code Section 10427.1, these unclaimed construction funds remaining as of June 30, 2009, plus interest, be transferred to the General Fund; and

WHEREAS, there is a remaining balance in the administrative accounts in the redemption funds for certain Districts that were established for the payment of the City's costs to collect assessments, register and pay bonds, and comply with federal arbitrage requirements, and the Administration's Memorandum recommends that these excess administrative funds remaining as of June 30, 2009, plus interest, be transferred to the General Fund in accordance with Streets and Highways Code Section 8784; and

WHEREAS, the Administration's Memorandum recommends that balances remaining in the redemption funds resulting from assessments paid to the City be disbursed and transferred as follows: (1) the bulk of these excess funds are to be disbursed to past assessees; (2) for those Districts with balances of under \$1,000, the remaining funds are to be transferred to the General Fund; and (3) in the case of 3 of the Districts where improvement districts or a community facility district were established that encompass the same boundaries, the

remaining redemption funds are to be transferred to the revenue funds established for these subsequent districts for the repayment of the bonds issued for those districts; and

WHEREAS, the Administration's Memorandum recommends that in accordance with Streets and Highways Code Section 8885, the remaining bond reserve funds, which were established to provide security for Bond payments in the event property owners were delinquent in their payments, be disbursed to persons and businesses previously assessed; and

WHEREAS, the Administration's Memorandum recommends that the excess water main repayment funds be disbursed and transferred in accordance with Streets and Highways Code Section 10110.1; and

WHEREAS, on this date, this Council will take action to adopt amendments to the Fiscal Year 2009-10 Funding Sources Resolution and the Appropriation Ordinance consistent with the actions summarized in this Resolution;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

SECTION 1. Declaration of Surplus Construction Funds for Improvement District No. 83-180SJ (Tenth-Senter) and Improvement District No. 87-201SJ (N. 1st Street – E. Tasman Refunding).

Pursuant to Streets and Highways Code Section 10427, the City Council hereby declares the construction fund balance in the amount of \$214,540 for Improvement District No. 83-180SJ (Tenth-Senter) and the construction fund balance in the amount of \$72,974 for Improvement District No. 87-201SJ (N. 1st Street – E. Tasman Refunding), together with interest accrued since the date of the June 30, 2009 accounting, to be surplus funds. The surplus shall be transferred to the City's General Fund for the maintenance of the improvements funded by Improvement District Nos. 83-180SJ and 87-201SJ.

SECTION 2. Disposition of Construction Funds for Districts for which the City Council Has Previously Declared Surplus Funds.

Pursuant to Streets and Highways Code Section Section 10427.1, the liquidation of surplus construction funds for the Districts for which the City Council has previously declared such funds surplus, and the transfer of these funds to the General Fund in the amount specified in the Administration's Memorandum, is hereby approved.

SECTION 3. Disposition of Administrative Funds.

Pursuant to Streets and Highways Code Section 8784, the liquidation of the excess administrative funds in the redemption funds in the amount specified in the Administration's Memorandum and transfer of these funds to the General Fund is hereby approved.

SECTION 4. Disposition of Excess Assessment Funds.

Pursuant to Streets and Highways Code Section 8784, the recommendations for the disposition of excess assessments in the Districts' redemption funds set forth in the Administration's Memorandum are hereby approved as outlined below. The amounts specified are the amounts remaining as of June 30, 2009.

- A. Transfer \$3,989, plus interest, from Improvement District 89-205SJ to the revenue fund established for Community Facilities District 9 (Bailey-Route 101).
- B. Transfer \$21, plus interest, from Improvement District 93-213SJ (Capitol-Copperfield) to Improvement District 02-219SJ (2002 Consolidated Refunding).
- C. Transfer \$0.14, plus interest, from Improvement District 94-215SJ (Silver Creek Refunding) to Improvement District 02-219SJ (2002 Consolidated Refunding).
- D. Transfer \$184, plus interest, from Improvement Districts 72-098SJ (Miller-Turlock-Janary-Carter) and 74-124SJ (O'Toole-Paragon) to the General Fund.
- E. Disburse \$4,020,298, plus interest, held in the redemption funds for the other Districts having a balance, plus interest, to the property owners of those real property parcels on the assessment roll for these Districts at the time the Bonds for

these Districts were paid off. The refund methodology specified in the Administration's Memorandum is also approved with the exception that no newspaper publication will be required following the conclusion of the one year claims period.

SECTION 5. Disposition of Excess Bond Reserve Funds.

Pursuant to Streets and Highways Code Section 8885, the recommendations set forth in the Administration's Memorandum for the refund of the remaining bond reserve funds, including the refund methodology, to the prior assessees are hereby approved. The amounts specified are the amounts remaining as of June 30, 2009.

- A. Disburse \$2,416,112, plus interest, to the property owners in Improvement District 94-214SJ (Consolidated Refunding) who paid off the assessments prior to the date that the Bonds for Improvement District 94-214SJ were paid off and to the property owners of those real property parcels on the assessment roll at the time the Bonds for Improvement District 94-214SJ were paid off.
- B. Disburse \$99,504, plus interest, to the property owners of those real property parcels on the assessment roll in Improvement District 92-208SJ (Hellyer-Fontanoso Refunding) at the time the Bonds for Improvement District 92-208SJ were paid off.

SECTION 6. Disposition of Excess Water Main Repayment Funds.

The disposition of excess water main repayment funds, including the disbursement of a portion of the funds to past assessees, and the liquidation and transfer to the General Fund of the remaining portion of the funds pursuant to Streets and Highways Code Section 10110.1, as specified in the Administration's Memorandum, is hereby approved. The deposit of water main repayment funds in the General Fund that are paid to the City in the future pursuant to

the agreements that were entered into in connection with any of the Districts is also approved.

SECTION 7. Miscellaneous.

- A. The Finance Director is authorized and directed to implement the fund transfers and disbursements described above.
- B. So far as this Resolution may be inconsistent with the Resolutions of Intention to Order Improvements in the Districts, this Resolution shall constitute a change within the meaning of Chapter 4.5 of the Municipal Improvement Act of 1913. The City Council finds that this change does not increase the total amount of the assessment and in light of the fact that the assessment liens imposed on the real property parcels within each of these Districts have been removed is, therefore, made without notice and hearing under the provisions of Streets and Highways Code Section 10352.
- C. In the event that this Resolution is inconsistent with any prior Resolution of this Council with respect to disposition of the surplus construction funds, the provisions of this Resolution shall control.

ADOPTED this 25th day of May, 2010, by the following vote:

AYES: CAMPOS, CHIRCO, CHU, CONSTANT, HERRERA,
LICCARDI, NGUYEN, OLIVERIO, PYLE; REED.

NOES: KALRA.

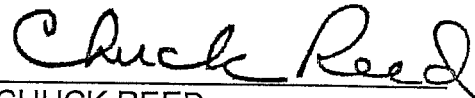
ABSENT: NONE.

DISQUALIFIED: NONE.

ATTEST:



LEE PRICE, MMC
City Clerk



CHUCK REED
Mayor

APPENDIX A
EXPIRED SPECIAL ASSESSMENT DISTRICTS
Summary of Funds

RES NO 75381

June 30, 2009 Cash Balance

District No.	Description	Bond Series	City Fund #*	Current No. of Parcels	Redemption Fund					Construction	
					Assessments	Reserves	Water Main	Admin	Subtotal	Fund	Total
70-068	Brokaw-Trimble-Zanker	21M	613 / 713	95	\$ 17,355	\$ -	\$ -	\$ -	\$ 17,355	\$ 360,401	\$ 377,756
72-085	Trimble-Lundy	21X	620 / 720	272	101,649	-	-	858	102,507	30,933	133,440
72-094	Calero Ave.	21K	621	21	-	-	-	-	-	1,380	1,380
72-098	Miller-Turlock-Janary-Carter	21V	723	17	182	-	-	-	182	-	182
73-103	Zanker Road	21G	624 / 724	14	103,017	-	-	-	103,017	229,717	332,734
73-113	Bonaventura Dr.	21N	727	12	172,194	-	-	-	172,194	-	172,194
73-116	Gish Road	21P	730	51	4,971	-	-	-	4,971	-	4,971
74-118	Skyport Dr-Forrestal	21L	631 / 731	51	33,272	-	10,173	-	43,445	58,406	101,851
74-119	Bernal - S. Teresa	21S	632 / 732	33	10,633	-	-	-	10,633	197,574	208,207
74-120	11th-Horning	22A	733	14	35,902	-	-	-	35,902	-	35,902
74-122	San Tomas Aquino Rd.	22N	635 / 735	80	65,033	-	8,190	1,783	75,006	1,633	76,639
74-124	O'Toole-Paragon	21W	736	39	2	-	-	-	2	-	2
74-129	Bernal - Via Del Oro	21Y	638 / 738	7	9,238	-	-	-	9,238	1,332	10,570
76-138	Stone-Cimino	22B	639 / 739	10	-	-	7,801	-	7,801	192,989	200,790
76-140	Gateway Place	22D	740	7	18,790	-	-	-	18,790	-	18,790
76-141	Old Oakland-Rock	22J	641 / 741	107	8,326	-	-	-	8,326	18,232	26,558
77-144	Charcot-Bering	22F	643 / 743	28	873	-	8,767	-	9,640	994,640	1,004,280
77-145	Brokaw-Technology	22G	644 / 744	53	8,009	-	-	-	8,009	19,523	27,532
77-146	Zanker-Montague	22V	645	31	-	-	-	-	-	361,524	361,524
77-147	Hwy 9-Fallenleaf	22K	746	2	1,316	-	-	-	1,316	-	1,316
77-148	Zanker-Bayshore	22P	647 / 747	12	131,509	-	37,755	-	169,264	15,538	184,802
78-149	Northerly Bering Extension	22L	648 / 748	9	4,394	-	201	-	4,595	114,644	119,239
78-150	Orchard-Montague	22Q	749	11	8,581	-	-	-	8,581	-	8,581
78-151	Orchard-Plumeria	22S	650 / 750	7	8,494	-	-	-	8,494	19,632	28,126
78-152	S. Teresa-Great Oaks	22U	651	77	-	-	-	-	-	10,524	10,524
78-153	River Oaks Industrial Park	22R	652 / 752	593	180,189	-	-	-	180,189	193,749	373,938
79-158	Rancho Drive	23B	656	153	-	-	-	-	-	57	57
79-159	Coleman-Santa Teresa	22T	657 / 757	2	122,717	-	21,635	-	144,352	286,094	430,446
80-160	Cottle-Hospital Pkwy.	22W	658	1	-	-	-	-	-	27,917	27,917
80-162	Tully-Senter	22Z	659 / 759	5	44,960	-	-	-	44,960	1,019	45,979
81-165	Sanchez Drive	23A	661 / 761	2	61,543	-	61,074	-	122,617	360,203	482,820
81-168	Geomax-Collishaw	23F	663	13	-	-	-	-	-	8,035	8,035
82-171	North First-Viebrock	23E	665	38	-	-	-	-	-	26,090	26,090
83-174	Payne-Phelps	23G	767	2	7,392	-	-	4	7,396	-	7,396
83-176	Senter-Wool	23N	669 / 769	71	88,833	-	18,831	3,274	110,938	51,785	162,723
83-180	Tenth-Senter	23Z	672 / 772	77	8,057	-	30,191	-	38,248	214,540	252,788
84-183	Blossom Hill-Snell	23S	674 / 774	6	13,550	-	-	-	13,550	9	13,559
84-186	Hostetter-UPRR Tracks	23U	777	9	-	-	14,353	-	14,353	-	14,353
84-189	First St.-Holger Wy.	23Y	678	16	-	-	-	-	-	225,337	225,337
84-190	Commercial-Berryessa	23T	779	6	-	-	9,313	-	9,313	-	9,313
86-196	Oakmead Refunding	23V	681	145	-	-	-	-	-	3,928	3,928
86-197	Old Oakland-Fox	23X	682 / 782	1	57,997	-	-	-	57,997	8,471	66,468
87-198	Old Oak-Murphy Refunding	24B	784	232	24,051	-	19,955	-	44,006	-	44,006
87-201	N 1st St.-E Tasman Refunding	24A	683	20	-	-	-	-	-	72,974	72,974
89-205	Bailey-S. Teresa	24D	787	11	3,989	-	-	-	3,989	-	3,989
92-208	Hellyer-Fontanosos Refunding	24H	790	31	78,957	99,504	-	22,467	200,928	-	200,928
93-210	Consolidated Refunding	24J	792	258	714,092	-	-	48,767	762,859	-	762,859
93-213	Capitol-Copperfield	24L	794	140	21	-	-	-	21	-	21
94-214	Consolidated Refunding	24M	796	283	1,874,404	2,416,112	-	130,831	4,421,347	-	4,421,347
94-215	Silver Creek Refunding	24N	797	1061	0.14	-	-	-	0.14	-	0.14
TOTAL					\$ 4,024,492	\$ 2,515,616	\$ 248,239	\$ 207,984	\$ 6,996,331	\$ 4,108,830	\$ 11,105,161

* Funds numbered in the 600s are Construction Funds; funds numbered in the 700s are Redemption Funds.

APPENDIX B
EXPIRED SPECIAL ASSESSMENT DISTRICTS
Summary of Prior Council Actions Declaring/Directing Use of Surplus Construction Funds

RES NO 75381

<u>District No.</u>	<u>Description</u>	<u>Bond Series</u>	<u>City Fund #</u>	<u>Resolution Number</u>	<u>Resolution Date</u>
70-068	Brokaw-Trimble-Zanker	21M	613	63961	8/4/92
72-085	Trimble-Lundy	21X	620	57186	1/31/84
72-094	Calero Ave.	21K	621	63962	8/4/92
73-103	Zanker Road	21G	624	60728	6/28/88
73-113	Bonaventura Dr.	21N	627	53268	6/10/80
73-116	Gish Road	21P	630	63964	8/4/92
74-118	Skyport Dr-Forrestal	21L	631	59863	6/9/87
74-119	Bernal - S. Teresa	21S	632	60727	6/28/88
74-120	11th-Horning	22A	633	53269	6/10/80
74-122	San Tomas Aquino Rd.	22N	635	60230	12/1/87
74-124	O'Toole-Paragon	21W	636	63190	8/6/91
74-129	Bernal - Via Del Oro	21Y	638	60231	12/1/87
76-138	Stone-Cimino	22B	639	60232	12/1/87
76-140	Gateway Place	22D	640	59865	6/9/87
76-141	Old Oakland-Rock	22J	641	60730	6/28/88
77-144	Charcot-Bering	22F	643	59866	6/9/87
77-145	Brokaw-Technology	22G	644	59867	6/9/87
77-146	Zanker-Montague	22V	645	60233 & 65212	12/1/87 & 5/3/94
77-147	Hwy 9-Fallenleaf	22K	646	54369	3/24/81
77-148	Zanker-Bayshore	22P	647	60726	6/28/88
78-149	Northerly Bering Extension	22L	648	59868	6/9/87
78-150	Orchard-Montague	22Q	649	60725	6/28/88
78-151	Orchard-Plumeria	22S	650	60729	6/28/88
78-152	S. Teresa-Great Oaks	22U	651	60234 & 65212	12/1/87 & 5/3/94
78-153	River Oaks Industrial Park	22R	652	58801	12/17/85
79-158	Rancho Drive	23B	656	63191	8/6/91
79-159	Coleman-Santa Teresa	22T	657	60235	12/1/87
80-160	Cottle-Hospital Pkwy.	22W	658	63967	8/4/92
80-162	Tully-Senter	22Z	659	62251	6/19/90
81-165	Sanchez Drive	23A	661	59869	6/9/87
81-168	Geomax-Collishaw	23F	663	59870 & 65212	6/9/87 & 5/3/94
82-171	North First-Viebrock	23E	665	60236	12/1/87
83-174	Payne-Phelps	23G	667	64805	8/3/93
83-176	Senter-Wool	23N	669	62253 & 63327	6/19/90 & 10/29/91
83-180	Tenth-Senter	23Z	672	<i>Recommended</i>	
84-183	Blossom Hill-Snell	23S	674	62254	6/19/90
84-186	Hostetter-UPRR Tracks	23U	677	62050	4/3/90
84-189	First St.-Holger Wy.	23Y	678	64462	4/6/93
84-190	Commercial-Berryessa	23T	679	62255	6/19/90
86-196	Oakmead Refunding	23V	681	64806	8/3/93
86-197	Old Oakland-Fox	23X	682	63968	8/4/92
87-201	N 1st St.-E Tasman Refunding	24A	683	<i>Recommended</i>	
93-213	Capitol-Copperfield	24L	694	69061	8/10/99

* Funds numbered in the 600s are Construction Funds; funds numbered in the 700s are Redemption Funds.